

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

**DEC 02 2005**

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

RICHARD TEPLICK,

Plaintiff - Appellant,

v.

THE BOEING COMPANY EMPLOYEE  
HEALTH AND WELFARE BENEFIT  
PLAN, an Erisa employee welfare benefit  
plan,

Defendant - Appellee.

No. 04-35690

D.C. No. CV-03-00264-AS

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the District of Oregon  
Garr M. King, District Judge, Presiding

Argued and Submitted November 16, 2005  
Portland, Oregon

Before: KLEINFELD and GRABER, Circuit Judges, and MOSKOWITZ<sup>\*\*</sup>,  
District Judge.

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<sup>\*</sup> This disposition is not appropriate for publication and may not be  
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The Honorable Barry Ted Moskowitz, United States District Judge for  
the Southern District of California, sitting by designation.

Teplick never moved to supplement the record to provide evidence rebutting the magistrate judge's report and recommendation.<sup>1</sup> Before this Court, Teplick admitted that he did not have any additional evidence to submit. Because he failed to attempt to provide additional evidence to the district court, Teplick has waived any claim of prejudice regarding the development of the facts or scope of review.

Teplick did not establish that his disability made him unable to perform his old job or any other job.

**AFFIRMED.**

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<sup>1</sup> *Cf. Mongeluzo v. Baxter Travenol Long Term Disability Benefit Plan*, 46 F.3d 938, 943-944 (9th Cir. 1995).

